



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,390	05/31/2001	Daniel A. Maude	CAO-0090	9880

7590 12/01/2006
CANTOR COLBURN LLP
55 GRIFFIN ROAD SOUTH
BLOOMFIELD, CT 06002

EXAMINER

EVANISKO, LESLIE J

ART UNIT PAPER NUMBER

2854

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

58

Notice of Abandonment	Application No.	Applicant(s)	
	09/871,390	MAUDE ET AL.	
	Examiner	Art Unit	
	Leslie J. Evanisko	2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 15 August 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 10 October 2006 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.


4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☒ The reason(s) below:

See attached Examiner's Comment.


 Leslie J. Evanisko
 Primary Examiner
 Art Unit: 2854

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Examiner's Comment

A request for continued examination under 37 CFR 1.114 was filed in this application on October 10, 2006, after appeal to the Board of Patent Appeals and Interferences. Therefore, the appeal has been withdrawn pursuant to 37 CFR 1.114. The request, however, lacks the fee required by 37 CFR 1.17(e) and/or the submission required by 37 CFR 1.114. Since the proceedings as to the rejected claims are considered terminated, and no claim is allowed, the application is abandoned. See MPEP 1215.01.

It is noted that the RCE filed October 10, 2006 included the fee required by 37 CFR 1.17(e) and a submission of an Information Disclosure Statement. However, for a case under appeal, MPEP 706.07(h)(II) states that the submission must include a reply under 37 CFR 1.111 to the last outstanding office action (i.e., the non-final rejection dated 08/15/2005). It further states that "an applicant may file a submission under 37 CFR 1.114 containing only an information disclosure statement...in an application subject to a notice of allowance under 35 USC 151, but not in an application where the last Office action is a final rejection or an Office action under Ex parte Quayle....or in an application that is under appeal." Therefore, the submission of the IDS by applicant in the RCE dated October 10, 2006 is not a *bona fide* attempt to provide a complete reply, as set forth in MPEP 706.07(h)(VI). Therefore, the period for reply will not be tolled. The RCE (even though improper) has resulted in withdrawal of the appeal pursuant to 37 CFR 1.114(d). Furthermore, MPEP 1215.01 also states that if applicant withdraws the appeal after the period for reply to the rejection has expired, the application is considered to be abandoned as of the date on which the appeal was withdrawn unless there are allowed claims in the case.


Additional attention is invited to MPEP 706.07(h)(X) and 1215.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Leslie J. Evanisko** whose telephone number is **(571) 272-2161**. The examiner can normally be reached on T-F 8:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lje
November 22, 2006


Leslie J. Evanisko
Primary Examiner
Art Unit 2854